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Filing date: **07/21/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

### Petitioner Information

Name	THE ONE GROUP LLC		
Entity	limited liability company	Citizenship	Delaware
Address	411 W 14th St. New York, NY 10014 UNITED STATES		

Attorney information	William S. Hilton Pergament Gilman & Cepeda LLP 163 Madison Ave Suite 110 Morristown, NJ 07960 UNITED STATES whilton@pgclawgroup.com, mgilman@pgclawgroup.com, lmac-queen@pgclawgroup.com Phone:973-998-7722
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### Registration Subject to Cancellation

Registration No	1978469	Registration date	06/04/1996
Registrant	225 W. Ontario Corp. 6666 North Oliphant Chicago, IL 60631 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 042. First Use: 1995/04/14 First Use In Commerce: 1995/04/14 All goods and services in the class are cancelled, namely: restaurant, night club, bar, and catering services
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### Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	Petition To Cancel MAGNUM'S mark.pdf(308927 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/William S. Hilton/
Name	William S. Hilton

Date	07/21/2014
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

THE ONE GROUP LLC,	X	
	:	
	:	
Petitioner,	:	Cancellation No.
	:	
v.	:	
	:	Registration No. 1,978,469
225 W. ONTARIO CORP,	:	
	:	
Respondent.	:	
	X	

**PETITION TO CANCEL**

**In the matter of** U.S. Trademark Registration No. 1,978,469 (hereinafter “the ‘469 registration”), issued June 4, 1996, for the mark MAGNUM’S in the name of 225 W. ONTARIO CORP, an Illinois corporation located at 6666 North Oliphant, Chicago, Illinois 60631 (“Respondent”), for “Restaurant, night club, bar, and catering services” in Class 42.

Petitioner The One Group LLC (hereinafter “Petitioner”) is located and doing business at 411 West 14<sup>th</sup> Street, New York, NY 10014, and believes it is and will continue to be damaged by the existence on the Principal Register of the U.S. Patent and Trademark Office (“USPTO”) of the ‘469 Registration for the mark MAGNUM’S, owned by Respondent, and hereby petitions to cancel same pursuant to §14(1) of the Trademark Act of 1946, 15 U.S.C. §1064(1).

As grounds therefore, it is alleged:

1. Petitioner is the owner of the mark MAGNUM MONDAYS.
2. Petitioner has used the MAGNUM MONDAYS mark in US commerce since at least February 7, 2011.
3. The services for which Petitioner has used the MAGNUM MONDAYS mark in US

commerce since at least February 7, 2011 are listed in Petitioner's pending US Trademark Application, which application was filed June 25, 2014, assigned Serial No. 86/320,170, and covers "Arranging and conducting special events for business purposes; Arranging and conducting special events for commercial, promotional or advertising purposes; Special event planning for business purposes; Special event planning for commercial, promotional or advertising purposes" in Class 35; "Arranging and conducting nightclub entertainment events; Arranging and conducting nightclub parties; Arranging and conducting special events for social entertainment purposes; Night clubs; Special event planning for social entertainment purposes" in Class 41; and "Bar services; Café and restaurant services; Cocktail lounge services; Providing of food and drink; Restaurant services; Serving food and drinks" in Class 43.

4. Petitioner was also the owner of the following abandoned U.S. Trademark Applications (hereinafter "the Abandoned Applications"):

A. MAGNUM MONDAY, filed March 16, 2012, assigned Serial No. 85/571,229, abandoned on October 1, 2012, covering "Arranging and conducting special events for business purposes; Arranging and conducting special events for commercial, promotional or advertising purposes; Special event planning for business purposes; Special event planning for commercial, promotional or advertising purposes" in Class 35; and "Arranging and conducting special events for social entertainment purposes; Special event planning for social entertainment purposes" in Class 41.

B. MAGNUM MONDAY, filed March 7, 2012, assigned Serial No. 85/56,378, abandoned on September 28, 2012, covering "Night clubs" in Class 41; and "Bar services; Cafe services; Cocktail lounge services; Providing of food and drink; Restaurant services; Restaurant services, including sit-down service of food and take-out restaurant services; Serving food and

drinks” in Class 43.

5. The MAGNUM MONDAYS mark of Petitioner is symbolic of extensive good will and consumer recognition built up by Petitioner through substantial amounts of time and effort in using, advertising and promoting the mark for at least the last three and a half (3 ½) years.

6. The MAGNUM MONDAYS mark is of significant value to Petitioner as an identifier of its services and Petitioner intends to continue using, promoting and expanding the use of its MAGNUM MONDAYS mark.

7. The existence of the ‘469 Registration has served as an obstacle to Petitioner’s attempts to register its MAGNUM MONDAYS mark. More particularly, each of Petitioner’s Abandoned Applications were refused by the USPTO under § 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), based on the ‘469 Registration, which subsequently resulted in their abandonment.

8. The continued existence of the ‘469 Registration on the Principal Register places a cloud over Petitioner’s rights in the MAGNUM MONDAYS mark, both as to its continuing use and registration thereof.

9. Upon information and belief, the MAGNUM’S mark, which is the subject of the ‘469 Registration, is not now in use, has not been used by Respondent for at least the three (3) consecutive years immediately preceding the filing date of this Petition to Cancel, was not in use by Respondent for multiple periods of at least three (3) consecutive years, and at all such times said use has, and had, been discontinued with the intent not to resume, whereby Respondent has abandoned said mark at least as to the services recited in the ‘469 Registration, pursuant to § 45 of the Lanham Act, 15 U.S.C. § 1127.

10. Since the MAGNUM’S mark, which is the subject of the ‘469 Registration, has been abandoned, the ‘469 Registration should be cancelled pursuant to § 14(3) of the Lanham Act,

15 U.S.C. § 1064(3).

**WHEREFORE**, Petitioner, The One Group LLC, requests that its Petition to Cancel be granted and that Registration No. 1,978,469 be stricken from the Principal Register based upon all the grounds herein, including, but not limited to:

A. Respondent's abandonment of the MAGNUM'S mark of the '469 Registration through Respondent's discontinued use of the MAGNUM'S mark with intent not to resume; and

B. Such other and further relief as the Board may deem just.

The Commissioner is authorized to charge any deficiencies in payment, or credit any overpayment, to Deposit Account No. 50-4711.

Respectfully submitted,

PERGAMENT GILMAN & CEPEDA LLP  
Attorneys for Petitioner  
163 Madison Ave., ste 110  
Morristown, New Jersey 07960  
(973) 998-7722 phone  
(973) 998-7720 fax  
[whilton@pgclawgroup.com](mailto:whilton@pgclawgroup.com)  
[mgilman@pgclawgroup.com](mailto:mgilman@pgclawgroup.com)

Dated: July 21, 2014

By: s/William S. Hilton/  
William S. Hilton

**CERTIFICATE OF SERVICE**

I, William S. Hilton, do hereby certify that a true and correct copy of the document, entitled: “**PETITION TO CANCEL**”, was served on this 21<sup>st</sup> day of July, 2014, by first class mail, postage prepaid, on Respondent’s correspondent/attorney of record in Registration No. 1,978,469 and Respondent, as follows:

Marke E. Wiemelt, Esq.  
Law Offices of Mark E. Wiemelt  
10 S. LaSalle St., Suite 3300  
Chicago, Illinois 60603  
Phone Number: (312) 372-7664

and

225 W. Ontario Corp.  
6666 North Oliphant  
Chicago, Illinois 60631

Dated: July 21, 2014

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s/William S. Hilton/  
William S. Hilton

**Certificate Of Filing On ESTTA System**

I hereby certify that this document is being filed using the United States Patent and Trademark Office website ESTTA service, on this 21<sup>st</sup> day of July, 2014.

Dated: July 21, 2014

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s/William S. Hilton/  
William S. Hilton